

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
BEAUFORT DIVISION

Franklin A. Benjamin, #245407,	)	C/A No.: 9:12-cv-3265-TLW
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
Warden McCall, Lee Corr. Inst.,	)	
	)	
Respondent.	)	
_____	)	

**ORDER**

On November 14, 2012, the Petitioner, Franklin A. Benjamin (“Petitioner”), filed this §2254 Petition for a Writ of Habeas Corpus. (Doc. # 1).

The matter now comes before this Court for review of the Report and Recommendation (“the Report”) filed by Magistrate Judge Bristow Marchant, to whom this case had previously been assigned. (Doc. # 11). In the Report, the Magistrate Judge recommends that Petitioner’s Petition for a Writ of Habeas Corpus be summarily dismissed *without prejudice*. (Doc. # 11). Objections were due by January 22, 2013, and Petitioner filed objections to the Report on January 14, 2013. (Doc. # 15). The Court has reviewed and considered the objections. In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections.... The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court’s

review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and the objections. After careful review of the Report and objections thereto, the Court hereby **ACCEPTS** the Magistrate Judge's Report and Recommendation (Doc. # 11) and Petitioner's Petition for a Writ of Habeas Corpus (Doc. # 1) is **DISMISSED** *without prejudice*. To the extent the Petitioner characterizes his petition as a Motion to Request Leave to File a Successive Petition, the Court directs the Petitioner to file future motions with the proper court.

**IT IS SO ORDERED.**

s/Terry L. Wooten  
United States District Judge

January 18, 2013  
Columbia, South Carolina